HON'BLE SRI JUSTICE K.C. BHANU

W.P.NO.24537 OF 2003

DATED: 25.7.2005

Between:

Mohd. Hussain

… Petitioner

and

The Chairman, Industrial Tribunal-II,

Hyderabad and another

… Respondent

HON'BLE SRI JUSTICE K.C. BHANU

W.P.NO.24537 OF 2003

ORDER:

This writ petition has been filed for a writ of Mandamus declaring the action of

the 1st respondent-Industrial Tribunal-II in dismissing the I.A.No.74 of 2003 in I.D.No.60 of 2002 dated 16.7.2003, as illegal and further to direct the 2nd respondent-municipality to produce the original proceedings Lr.No.C/150/MCR/97 dated 28.5.1999 of the 2nd respondent municipal Commissioner and Proceedings ROC No.12857/99-M2 dated 21.7.1999 of the Commissioner and Director of Municipal Administration, which are under the custody of the respondent No.2 herein.

The facts in brief are that the petitioner was appointed as Safai Karmachary on daily wage basis in the 2nd respondent municipality in the year 1993. Subsequently, it is the case of the petitioner that his services were terminated w.e.f. 3.8.1999. Aggrieved thereby, he preferred I.D.No.60 of 2002. He also filed an application i.e. I.A.No.74 of 2003 before the Tribunal seeking to summon the proceedings dated 28.5.1999 issued by the 2nd respondent and proceedings dated 21.7.1999 of the Commissioner and Director of Municipal Administration. The said application was dismissed on the ground that those two documents were not maintained by the respondent-municipality.

Learned counsel for the petitioner contended that those two proceedings form correspondence between the municipality and the Commissioner and Director of Municipal Administration and they have a bearing in the main industrial dispute and, therefore, this I.A. is filed to summon those documents. It is his further contention that without assigning any reasons the said application is dismissed.

On the other hand, learned Standing Counsel for the respondent-municipality contended that since the documents are not maintained by the municipality, they could not be in a position to produce the same and hence the petition deserves to be dismissed. It is further their case that as against the retrenchment of 14 workers, the workers raised the industrial dispute in I.D.No.60 of 2002, which according to them,

is contrary to Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act').

As seen from the notice dated 3.8.1999 issued by the Municipal Commissioner, it is clear that a reference of the letter dated 21.7.1999 issued by the Commissioner and Director of Municipal Administration was made while retrenching all the 14 workers as per Section 25-F of the Act. The next document on which the petitioner placed reliance is the Municipal Commissioner's proceedings dated 28.5.1999, which was referred to in the proceedings dated 21.7.1999 issued by the Commissioner and Director of Municipal Administration. These two documents are in the custody of the 2nd respondent municipality and they cannot contend that those documents are not maintained by them.

Admittedly, those two documents must have been with the respondent-municipality and, accordingly, they have been referred to in the relevant proceedings. The question whether the proceedings are relevant or not can be decided at the time of admission of the documents. At this stage the sole ground, on which the I.A. was dismissed stating that the documents are not maintained by the municipality, is untenable. The municipality is bound to produce the documents in their custody. Since the order does not contain any reason for rejecting the claim of the petitioner in not summoning the original proceedings, it has to be set aside. The relevancy and admissibility of those two documents are left open to be decided basing on the contentions raised by both the parties.

The writ petition is allowed setting aside the I.A.No.74 of 2003 in I.D.No.60 of 2002. No order as to costs.

25.7.2005

CVM